IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

**O R D E R**.

JALAM SINGH. V. THE STATE OF RAJASTHAN AND OTHERS.

S.B. CIVIL WRIT PETITION NO. 2300/2005,
under Article 226 of the Constitution of India.

DATE OF ORDER: SEPTEMBER 14, 2005.

**HON'BLE MR. JUSTICE R.P.VYAS**

Mr.Kuldeep Mathur, for Petitioner.
Mrs. Vidyawati Boar, Assistant Government Advocate,
for Respondents No. 1 to 3.
Mr.Mukesh Rajpurohit, for Respondent No.4

**BY THE COURT**:

**REPORTABLE**

By this writ petition, petitioner has prayed that the order dated 23.3.2005 (Annexure 5), issued by the Deputy Secretary, Panchayati Raj Department, Rajasthan, Jaipur and the order dated 13.4.2005 (Annexure 6) passed by the Chief Executive Offider, Pali may be quashed and set aside. It has also been prayed that the respondents may be directed to continue the petitioner on the post of Lower Division Clerk (L.D.C.) at Pancayat Samiti, Marwar Junction, District – Pali.

Brief facts giving rise to the instant petition are that vide order dated 3.10.1997 (Annexure 1), the petitioner was appointed as Lower Division Clerk. His seniority list (Annexure 2)

was issued by the Chief Executive Officer, Zila Parishad, Pali on 21.2.2004, in which his name finds place at S.No.24. It is further averred in the petition that Shri Nand Kishore Tiwari – Respondent No.4 has been transferred in place of the petitioner.

The Deputy Secretary, Department of Panchayati Raj issued a letter dated 30.9.2004 to the Chief Executive Officer, Zila Parishad, Pali stating therein that Shri N.K.Tiwari may be transferred to Panchayat Samiti, Marwar Junction, in place of one L.D.C. In response to the letter of the Deputy Secretary, the Chief Executive Officer, Zila Parishad, pali vide communication dated 10.1.2005 informed him that Shri Nand Kishore (Respondent No.4) is holding an important position in Zila Parishad, Pali, therefore, his transfer will disturb the functioning of Zila Parishad, Pali. Thereafter, the Deputy Secretary, Panchayati Raj Department, Jaipur vide letter dated 23.3.2005 directed the Chief Executive Officer, Zila Parishad, Pali to post Shri Nand Kishore Tiwari – Respondent No.4 at Panchayat Samiti, Pali, by relieving the petitioner. Vide order dated 13.4.2005 issued by the Chief Executive Officer, Zila Parishad, Pali, Respondent No.3 – the Vikas Adhikari, Panchayat Samiti, Marwar Junction, District – Pali was asked to relieve the petitioner from Panchayat Samiti Marwar Junction for joining duties at Zila Parishad, Pali, as the Deputy Secretary, Panchayati Raj Department vide order dated 23.3.2005 has transferred the petitioner from Panchayat Samiti Marwar Junction to Zila Parishad, Pali in place of Shri Nand

Kishore Tiwari – Respondent No.4. It is also averred in the petition that the order dated 13.4.2005 has been issued without following the procedure as laid down under Rule 289 of the Rajasthan Panchayati Raj Rules, 1996 (hereinafter referred to as 'the Rules, 1996').

Being aggrieved by the order dated 13.4.2005, passed by the Chief Executive Officer, Zila Parishad, Pali, the petitioner has preferred the instant petition.

It is submitted by the learned counsel for the petitioner that no specific order of transfer has been issued against the petitioner. Respondent No.2, in its order dated 13.4.2005, has stated that the petitioner has been transferred from Panchayat Samiti Marwar Junction by the Deputy Secretary, Panchayati Raj Department, Jaipur vide order dated 23.3.2005, but , according to the learned counsel for the petitioner, from a bare perusal of the order dated 23.3.2005, it reveals that the Deputy Secretary, Panchayati Raj Department, Jaipur has nowhere issued order of transfer against the petitioner. He he has only directed respondent No.3 to ensure relieving of the petitioner from Panchayat Samiti Marwar Junction against Respondent No.4. This, according to the learned counsel for the petitioner, shows that the respondents have posted petitioner in place of respondent No.4 only with a view to adjust him at Panchayat

Samiti, Pali.

It is further submitted by the learned counsel for the petitioner that there was no administrative exigency to effect transfer/posting of the petitioner from Panchayat Samiti Marwar Junction to Zila Parishad, Pali.

It is also submitted by the learned counsel for the petitioner that according to Rule 289 of the Rules, 1996, no transfer can be made without recommendation of the District Establishment Committee and the procedure provided under Rule 289, has not been followed.

Rule 289 of the Rules, 1996 reads as under :-

**Rule 289. Transfer within the district -**

(1)The name of the employee desiring transfer or desired to be transferred within the district shall be communicated to the District Establishment Committee by the Panchayat Samiti.

(2)Posting by transfer of such an employee shall be made by the Panchayat Samiti or Zila Parishad concerned on the recommendation of the District Establishment Committee.

(3)State Government may issue orders regarding transfers from time to time. In case District Establishment Committee/Sanding Committee of Panchayat Samiti does not agree, Chief Executive Officer/Vikas Adhikari, as the case may be, shall carry out orders of the State Government.

(4)On transfer of the employee, his confidential roll and service record will be transmitted, without avoidable delay, to the Panchayat Samiti/Zila Parishad to whom his services have been transferred."

In support of his contention, learned counsel for the

petitioner has placed reliance on the case of Dharampal & Another v. State of Rajasthan & Others , reported in 2005 (1) CDR 779, in which, with respect to transfer of a Government servant, it was observed by the learned single Judge that the power of transfer should be exercised by the Competent Authority and not by Delegated Authority.

Per contra, it is submitted by the learned counsel for the respondents that the petitioner has been transferred from Panchayat Samiti, Marwar Junction by the Deputy Secretary, Panchayati Raj vide order dated 23.3.2005. It is also clear from the order of the Deputy Director that he has directed to ensure relieving of the petitioner from Panchayat Samiti, Marwar Junction.

It is further submitted by the learned counsel for the respondents that sub-rule (3) of Rule 289 confers powers on the State Government to issue transfer orders of the Government servants from time to time. It is also provided in the aforesaid Rule that if the District Establishment Committee/Standing Committee does not agree, the Chief Executive Officer/Vikas Adhikar, as the case may be, shall carry out the order of the State Government. In this view of the matter, the Chief Executive Officer has followed Rule 289 (3) of the Rules, 1996 and has complied with the direction issued by the State

Government/ Competent Authority and in pursuance to that, he has directed the Vikas Adhikari to relieve the petitioner and allow Shri Nand Kishore Tiwari to join at Panchayat Samiti, Marwar Junction. More so, the Chief Executive Officer has followed the directions issued by the State Government and the impugned order has been passed in exercise of the powers conferred under Rule 289 (3) of the Rules, 1996.

Heard learned counsel for the parties.

The State Government has transferred the petitioner from Marwar Junction to Pali. The transfer is an incidence of service. There is no violation of Rule 289 of the Rules, 1996, as alleged by the petitioner. The Chief Executive Officer, Pali has rightly issued order dated 13.4.2005 in exercise of the powers vested in him under Rule 289 (3) of the Rules, 1996. Apart from that, there appears to be no illegality in the transfer order, as the State Government is empowered to transfer the Government servants from time to time as per the requirement of the administration. Apart from that, the power of transfer has been exercised by the Competent Authority of the State Government, after applying its mind, which cannot be said to illegal or unreasonable. So far as the case of Dharampal (Supra), relied upon by the learned counsel for the petitioner, is concerned, it may be stated that the power of the transfer should be exercised by the Competent Authority and, in the case of the petitioner,

the State Government is the Competent Authority which has rightly exercised the power to transfer the petitioner in the interest of administration. Thus, this authority is of no help of assistance to the learned counsel for the petitioner.

Taking an overall view of the matter, I do not find any merit in this writ petition. The writ petition is, therefore, dismissed. The interim order dated 19.4.2005 stands vacated.

(R.P.VYAS), J.

scd.